

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 644 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

MANILAL MANGALBHAI RAJPUT

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner.

MR HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 28-12-1997 passed by the Police Commissioner, Vadodara City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on seven prohibition cases out of which six are pending trial and one is under investigation. The main allegation against the petitioner is that the petitioner is a head-strong person selling country liquor with the help of his men . Over and above these prohibition cases, the detaining authority has also placed reliance on the statements of three witnesses of the alleged incidents of 29-11-1997, 17-10-1997 and 1-11-1997 whose names have not been disclosed in view of the privilege conferred upon the detaining authority under Section 9 (2) of the PASA Act. With regard to the incident of 29-11-97 it is alleged that while the witness was carrying passengers in his rickshaw, another rickshaw dashed with the rickshaw of the witness and when the witness scolded that rickshaw-driver, the petitioner got down from the rickshaw and started beating the witness and when the passengers tried to intervene, they were also beaten. On account of this the people gathered and the petitioner rushed towards them with the result people started running helter-skelter out of fear and the shops and lorry-Gallas on the road were closed.

With regard to the incident of 17-10-97 the witness was beaten by the petitioner when he refused to carry the liquor in his tempo . Even in this incident also the people gathered for watching the incident and when the witness out of fear started running, the petitioner with his man chased him with open sword and knife.

With regard to the incident of 1-11-1997 is concerned, the petitioner gave abuses and had beaten the witness when the witness had met the petitioner and requested him not to give liquor to his relative's son who is sick and when the petitioner was beating the witness , people gathered and the petitioner and his men thereafter chased the witness to his house with open sword and hockey-stick. This had created a rein of terror and fear in the locality.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a boot-legger within the meaning of Section 2(b) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by wya of this petition.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 28-12-1997 is quashed and set aside. The detenu Manilal Mangalbhai Rajput is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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